IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10566 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JJ PARMAR

Versus

STATE OF GUJARAT (NOTICE TO BE SERVED THRO

Appearance:

1. Special Civil Application No. 10566 of 1994
Ms. Sangeeta N. Pahwa for MR PM THAKKAR
for Petitioner No. 1-12
Mr. Siraj Ghori, AGP for Respondent No. 1
..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 10/12/2003

ORAL JUDGEMENT

Heard learned advocate Ms. Pahwa for Mr. Thakkar for the petitioners and Mr. Ghori, the learned AGP who is appearing for the respondents. In this petition, the petitioners are challenging the action of the respondents in seeking to terminate their services without holding of any inquiry as well as denial of the benefits of the higher pay scale though the petitioners have completed nine years of their continuous service. Brief facts of the present petition are to the effect that the names were called from the Employment Exchange by the respondents for the post of Computer; on 3rd February, 1984, the petitioners received interview call letter from the respondents and appeared for the interview on 3rd February, 1984.The petitioners, thereafter, received appointment orders after being selected in the interview held by the respondents on various dates from 15.2.1984 to 3.5.1984. The petitioners have given details of date of interview, date of appointment and the place of appointment at Annexure-A page 11. The respondents have filed affidavit in reply wherein the respondents have not disputed the details of date of interview, date of appointment and the place of appointment at Annexure-A page 11 given by the petitioners. Thereafter, on 7th January, 1994, the petitioners made representation to the respondents for giving them benefit of higher pay scale as they have completed nine years of service. On 14th February, 1994, reply has been received by the petitioners from the respondents that the petitioners are not entitled for the benefit of higher pay scale as the inquiry is pending they would be entitled for such benefit when the inquiry is over and appointment of the petitioners is made regular. On 21st February, 1994, reply was given by the petitioners to the respondents that till date, no inquiry is pending against the petitioner and not initiated by the respondents and the appointment are regular appointment. Thereafter, on 2nd March, 1994, the respondents gave reply to the petitioners that the appointments of the petitioners are not regular appointment. On the basis of the above correspondence between the petitioners and the respondents, the petitioners reliably learnt that the respondents are not considering their appointment as regular because as per the stand of the respondents, the names of the petitioners have not been forwarded by the Employment Exchange. According to the petitioners, their names have been registered with the Employment Exchange Office and yet the respondent no.3 has been directed by respondent no.2 to terminate the services of the petitioners and, therefore, the petitioners were apprehending such threat and, therefore, filed the petition alleging that their

services are likely to be terminated at any time. Initially, this Court (Coram : M.R. Calla, J.) passed the following order on 31.8.1994:

"Rule returnable in six weeks. Notice as to interim relief. In the meanwhile, the services of the petitioners shall not be terminated if they are already continuing on the date of filing of this special civil application i.e. 30.8.1994. Direct Service Permitted."

Therefore, in view of the aforesaid ad.interim order made by this court while admitting the petition, the petitioners have remained continued in service and even today, they are working with the respondents. Further, bare perusal of the ad.interim order made by this Court while admitting the petition makes it clear that this court has granted protection only against the termination if they were already continuing on the date of filing of the petition. Meaning thereby, this court has not granted any stay against initiation or contemplation of any inquiry against the petitioners. The petitioners have also annexed appointment orders issued in their favour by the respondents and the respondents have also not raised any dispute about such appointment orders.

On behalf of the respondents, affidavit in reply has been filed by the Deputy Director (UC) Respondent NO.2 Shri P.S. Pandya on 22nd November, 1995 wherein the deponent has contended in para 4 that except petitioners no.1,2,3 and 12, the question of appointment through proper channel and employment exchange is untrue. It has also been submitted by the deponent that the competent authority pursuant to the selection process carried out intimated to Regional Employment Officer as to interview made and decision to make appointment arrived at pursuant to the list of candidates sponsored by (purported to have been sponsored by) the employment exchange authority; the employment exchange authority did not confirm to have sponsored the candidates from Sr.No.1 to 12 except No.1,2,3 and 12 and disputed the communication sponsoring the names of the persons to the authorities; the authorities examined the issue concerning to fake document sponsored by petitioner no.4,5,6,7,8,9,10 and 11 and accordingly intimated the further course of action, which is the subject matter of challenge in Special Civil Application no. 10566 of 1994 wherein ex parte ad.interim relief has been granted by this court. In para 6 of the reply, the deponent has also contended that a fake and unauthorized list of candidate was sent to the

said office purported at the behest and instance which included the names of the petitioners except at sr.no.1,2,3 and 12. The deponent has also submitted that it came to the light where the office of the regional employment officer, Ahmedabad was informed about the number and names of the candidates appointed and the said authority informed vide his letter dated 1.10.1984 not to have sent such a list. The District Social Welfare Officer, Ahmedabad has also informed vide his letter dated 3.10.94 that the list earlier sent was not signed by the Head of the Office or the authorized officer. Thus, according to the deponent, the petitioners have managed to get appointments on fake and unauthorized list of candidates. The deponent has also submitted that since the petitioners are not the regular employees save and except the petitioners at sr.no. 1,2,3 and 12, they are not entitled for promotion and higher pay scale. The deponent has also submitted that as the inquiry in the matter was continued and a decision as to whether the petitioners may be considered regular or not was awaited, an interim reply was given to the petitioners. Since the petitioners have managed to get appointment on the basis of fake and unauthorized list, the appointments of the petitioners cannot be considered as regular one. The deponent has also contended that since the Regional Employment Officer, Ahmedabad is not a party, for want of joining of necessary party, the petition is required to be dismissed. On the basis of the aforesaid contentions, the deponent has prayed for dismissing the petition with costs.

Rejoinder to the affidavit in reply has been filed by the petitioners wherein details have been given about the date of registration of the employment exchange card number and the xerox copy thereof has been produced on record. The averments made by the deponent in the additional affidavit in para 3 are important. Same are, therefore, reproduced as under:

"3. I state that in support of the above facts, I am producing herewith copy of registration cards issued by the employment exchange at Annexure "I" collectively. I also crave leave to produce original cards before the Hon'ble Court at the time of hearing of the matter. I state that no notice is issued by the respondents and no inquiry whatsoever is initiated against the petitioners inter alia alleging that the names of the petitioners were not forwarded by the employment exchange. I deny the allegations made in the affidavit in reply by

the respondent No.2 that the petitioners have managed to get appointment on the basis of fake list of candidates. "

Aforesaid additional affidavit has been filed on behalf of the petitioners on 19th September, 1997 by one of the petitioners Mr. R.J. Parmar. Against the said additional affidavit, on behalf of respondents no.1 and 2, one Mr. P.S. Pandya, Deputy Director has filed further affidavit in reply wherein it has been contended in para 3 that on verification of facts, the facts were found from the fake list purported to have been concocted at the behest of the petitioners. The administration has called for the copy of the list for its confirmation with the employment exchange officer. Name of the petitioners except no.4 figures in the fake list and after verification of the facts, it has been found that all nine persons have procured employment by resorting to an illegal means and may be with the fully assistance from the employees of the commissioner and they are in close relation with the petitioners. Statement has been annexed to the reply wherein persons who have relationship with the persons appointed and the relationship with the petitioner who were working in the said office at the relevant time when the process was carried out have been pointed out. In para 7 of the said affidavit on behalf of the respondents, it has been submitted by the deponent that the proceedings were ordered to be initiated to take further steps after detecting the fraud but some how, on account of process carried out against the Additional director, it appears that the finality has not been attained and as soon as the finality was attained, some how it has been managed and thereafter the petition has been presented before the court wherein the court has granted interim relief and, therefore, inquiry has not been initiated. Along with the said further affidavit in reply, the deponent has produced certain documents on behalf of the respondents.

At this juncture, one important aspect is required to be noted that one similarly situated candidate Manharlal H. Parmar whose name was also there on the same list which was forwarded by the Employment Exchange and against whom similar allegations were made, said Shri Manharlal H. Parmar filed one petition before this court wherein this Court (Coram : R.C. Mankad,J.) ordered for issuing notice pending admission to the respondent no.2 returnable on 4th January, 1985. While issuing the notice pending admission, this court also granted ad.interim relief in terms of para 6(B) of the said petition. Thereafter, said petition was admitted

and this Court (Coram : I.C. Bhatt,J.) on 10th January, 1986, ordered to continue the ad.interim relief granted earlier and thereafter, said petition being special civil application no. 1 of 1984 came to be decided by this Court on 30th Jnue 2000 wherein this court rejected the said petition filed by said Shri Manharlal H. Parmar and the interim relief which had operated during the pendency of the said petition was ordered to be vacated. As a consequence thereof, services of the said candidate Shri Manharlal H. Parmar were terminated by the respondents after the result of the said petition. The petitioner in the said petition challenged the said orders dated 30th June, 2000 before the Division Bench of this Court by filing Letters Patent Appeal No. 370 of 2000 wherein the Division Bench of this Court (Coram : M.R. Calla and N.G. Nandi,JJ) on 24th July, 2001 set aside the judgment and order of the learned SIngle Judge of this Court and also directed the respondents to reinstate said candidate/petitioner Shri Manharlal H. Parmar in service with all the benefits as if the order of termination has never been passed against him. Accordingly, the Division Bench of this Court allowed the said appeal.

I have perused the orders passed by the Division Bench of this Court in respect of said Shri Manharlal H. Parmar against whom same allegations were made in the similar situation and on the basis of the the apprehension, said petition was filed but the difference is to the effect that because of the result of the said petition, after rejection of the said petition, services of the said petitioner were terminated and that aspect was considered by the Division Bench of this Court.

From the perusal of the averments made by the petitioner in the memo of petition, from the averments made by the deponent in the affidavit in reply filed on behalf of the respondents and the additional affidavit filed on behalf of the petitioners thereafter and the further affidavit filed by the respondents thereafter, it appears that the respondents have made certain allegations against the petitioners but it is clear and not in dispute that right from the date of appointment 15.2.1984 to 3.5.1984, 4th July, 1984 till the date, the respondents have not served any notice to the petitioners calling for explanation from the petitioners about the alleged allegations made in the reply. These facts are not in dispute. Till this date, the respondents have not initiated inquiry against any of the petitioners right from 1984 till this date and each petitioners worked with the respondents on the basis of the protection given by this court. In this petition, the petitioners are

praying for protection against termination and are also challenging the action of the respondents in denying benefits of higher grade to the petitioners. When the demand was made by the petitioners before the respondents claiming benefits of higher grade, that has been denied by the respondents only on the ground that their appointments are not regular and, therefore, such benefits cannot be extended in their favour. It is necessary to be noted that while issuing rule and granting ad.interim relief, this court has granted mere protection of services in favour of the petitioners but has not issued any directions against the respondents restraining them from initiating any inquiry against the petitioners. Thus, the respondents were never restrained from initiating any proceedings or inquiries against the petitioners . What was directed by this court was that their services shall not be terminated and nothing more than that and yet the respondents have, till this date, not issued any action or proceedings or inquiry against the petitioners from 1985. Not only that but no such application has been made by the respondents before this court seeking such permission and, thus, the respondents have remained silent for this period and no efforts have been made by the respondents for initiating inquiry against the petitioners in respect of the allegations made by the respondents against the petitioners in their affidavit in reply. From the further reply, one fact is very much clear that one inquiry has been initiated by the respondents against the Additional Director and that has not attained the finality. There is no further reply as to what has happened with the said inquiry initiated against the Additional Director in respect of the said incident. It is necessary to be noted one important aspect that alongwith the additional affidavit filed by the petitioner no. 5, certain documents of employment registration number, employment exchange card registration number and the date of registration are annexed to affidavit. Said additional affidavit was filed by petitioner no.5 on 19th September, 1997 and thereafter further affidavit was filed by the respondents on 13th October, 1997. There is no denial in respect of the details given by the petitioner in the additional affidavit about the date of registration and registration number and the employment exchange card in respect of each petitioner. Thus, the respondents have not challenged the genuineness of the employment exchange card registration number of the petitioners. The respondents have not alleged against the petitioners that the list has been prepared by the petitioners and was sent by the petitioners. What is alleged by the respondents is that the fake list has been prepared at

the instance or at the behest of the petitioners. How and on what basis these allegations were made is a matter of inquiry but the respondents have not initiated any such inquiry against the petitioners till this date. In view of these facts, since the respondents have not initiated any inquiry in respect of the allegations made by them against the petitioners though no prohibitory orders were passed by this court and, therefore, the petitioners are justified in apprehending that their services will be terminated by the respondents without giving any reasonable opportunity to them at any time. It is made clear that the respondents cannot terminate the services of the petitioners in respect of the allegations made by the respondents in the reply without giving reasonable opportunity to them and also without holding proper and legal departmental inquiry in accordance with law and, therefore, that action is required to be quashed and set aside.

Now the question is arising that after this much period, whether the respondents are entitled to held the departmental inquiry against the petitioners when initially no efforts have been made by the respondents to initiate any type of inquiry against the petitioners. If we will consider the case of such similarly situated and identically placed employee Mr. Manharlal H. Parmar against whom similar allegations were made in the year 1984 and he apprehended termination of his services and, therefore, he filed special civil application no. 1 of 1984. Though his matter was arising out of the same and similar list, at that time, no allegations were made by the respondents against the present petitioner from 1985 to 1994. No steps were taken by the respondents against the petitioners from 1985 to 1994. Each of the petitioners worked with the respondents without any such action or difficulty or grievance by the respondents. It is only when the petitioners raised demand for higher grade in the year 1994, the respondents came forward with a plea that such benefits of higher grade cannot be extended to them as their service is not regular one and while refusing for higher grade, also moved for removing them on that ground. The respondents, at that time, alleged that the appointment of the petitioners is not regular; they are not regularly appointed employees; their names have not been sponsored by the employment exchange and it was a fake list received by the department and, therefore, as their appointment is not regular, they are not entitled for any such benefit of higher grade. Thus, only because the petitioners, after completion of nine years, raised demand for grant of higher grade, whole trouble started and the respondents

decided to take action. In view of that, the petitioners apprehended that their services will be terminated by the respondents without following the procedure prescribed in law and, therefore, they approached this court and this court granted only protection as regards their service and then, again, the respondents remained silent for all these years from the date of filing of the petition till this date though they were not prevented by this court from taking action against the petitioners. Thus, if we consider it from 1985, from the date on which said Manharlal H. Parmar filed special civil application no. 1 of 1984, about 18 years have passed and if we consider it from the date on which the petitioners raised demand for grant of higher grade or from the date on which the petitioners approached this court by way of this petition, then, about more than nine years have passed and yet the respondents have not initiated any action or inquiry against the petitioners about the fake list. Admittedly the petitioners have continuously worked from the date of their appointment, more than 19 years and the respondents have not raised any grievance about the work or conduct or efficiency of the petitioners before this court in their replies. As regards this aspect, no doubt, the learned AGP has made a mention that no such prayer has been made in the petition by the petitioner that the inquiry should not be held. However, it is the duty of the court to consider the question arising from the matter when it is incidental or consequential. Once this Court held that there is reasonable apprehension in the mind of the petitioner that their services will be terminated by the respondents without holding the inquiry and once this court is of the view that such action is required to be quashed and set aside as illegal and contrary to the principles of natural justice, then the court can consider the matter for any other incidental or consequential relief. Therefore, the second immediate question would be as to whether the respondents should now be permitted to hold the departmental inquiry against the petitioners after this much period of 19 years or not. The another question arising is as to whether such permission would cause any prejudice to the petitioners in any manner whatsoever if such permission is granted after the period of about 19 years. This aspect has been examined by the Division Bench of this Court in the matter of K.B. Trivedi versus State of Gujarat reported in 2002 Lab IC 1198. In the said matter, after a period of 11 years, charge sheet has been issued to the employee and in view of the delay in issuance of the charge sheet to the employee, the Division Bench of this court came to the conclusion that that without explanation of delay, such type of charge sheet itself is bad and contrary to

the principles of natural justice. Considering the facts of the present case, in the year 1985, one candidate approached this Court challenging the apprehended action of termination of his services and from 1985 to 1994, no action has been taken by the respondents for initiating inquiry or proceedings against the petitioners. Even after filing of this petition wherein protection of service alone was granted and though the respondents were admittedly not restrained from initiating the proceedings, the respondents have not initiated any proceedings and now in the year 2003, they are seeking such permission without tendering any explanation for not initiating such proceedings or inquiry for such a long period of 19 years. Considering all such similar aspects of the matter,it has been observed by the Division Bench of this Court as under in para 7 and 8 of the judgment:

"7. In State of Madhya Pradesh v. Bani Singh (1990 Lab IC 1488) (supra), the charge sheet was issued in respect of certain incidents that had happened about 12 years ago. It was not the case of the department that they were not aware of the alleged irregularities but investigations were going on, according to the department.There was no satisfactory explanation for the inordinate delay in issuing the charge memo and in such circumstances, Court took the view that it would be unfair to permit the departmental enquiry to be proceeded with at that stage. In the other Judgment of the Supreme Court in State of Andhra Pradesh v. N. Radhakishan (AIR 1998 SC 1833) (supra), the incriminating report about the irregularities was made in the year 1987 and the charges were framed only in 1995. There was no explanation whatsoever for the delay in concluding the enquiry proceedings. It was nobody's case that the delinquent had, at any stage, tried to obstruct or delay the enquiry proceedings and in such circumstances, the charge memo was held to be liable to be quashed. The Supreme Court observed that; "The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to

undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings."

8. In absence of any explanation whatsoever for the prolonged delay in issuance of the charge sheet in the facts of the present case and applying the ratio of the above Judgments, we are of the opinion that the impugned charge sheet and intimation of disciplinary proceedings cannot be allowed to stand against the appellant. We are also of the considered opinion that the inordinate and unexplained delay in issuance of the charge sheet is on a footing worse to delay in concluding the departmental proceedings after its initiation. Having the admission of the Respondent on record that the department was aware of the alleged misconduct on the part of the appellant since the year 1989, the delay subsequent thereto has to be viewed all the more seriously. In such cases of delayed issuance of charge sheet, the delinquent would not be aware of an impending departmental action and in all probabilities, he would be seriously prejudiced in his defence as important evidence in his favour could have been lost or destroyed and his own memory would get blurred during the long period of complacency. Apart from these considerations, when a specific query was made as regards the time limit envisaged for completion of the departmental enquiry, the learned Assistant Government Pleader appearing for the department to make any statement in that regard. In such circumstances, it would be proper and necessary to set aside the impugned judgment and allow the original petition."

Thus, in the said reported decision, division bench of this Court has observed that in such cases of delayed issuance of charge sheet, delinquent would not be aware of an impending departmental action and in all probabilities, he would be seriously prejudiced in his defence as important evidence in his favour could have been lost or destroyed and his own memory would get blurred during the long period of complacency and in view of that, the appeal was allowed and the impugned charge sheet was set aside and the original petition was also allowed by the Division Bench of this Court.

The aspect as to what should be the reasonable period for initiation of proceedings against an employee

has been examined by the Division Bench of the Bombay High Court in the matter of Anil Vasantrao Shirpurkar and State of Maharashtra, Tribal Development Department and Others reported in 2003-I-LLJ page 275. In the said matter, initiation of proceedings against employee on ground that he is not belonging to Scheduled Tribe commenced for five years after regularization in service and seven years after appointment was held to be not within the reasonable period. In para 11 and 12 of the said reported decision, it has been observed by the Division Bench of the Bombay High Court as under:

"11. In the leading decision in State of Gujarat v. Patel Raghav Natha & Ors, AIR 1969 SC 1297 : 1969 (2) SCC 187, the Supreme Court held that the power of revision must be exercised within reasonable period. So far as reasonable period is concerned, it depends upon the scheme of the Act, nature of action likely to be taken consequences likely to ensue and such other relevant facts and circumstances. Even with regard to caste certificate, this Court in Chandrabhan Yamaji Nandanwar v. Director of Health Services Mah. State Bombay & Ors., 1999 (1) Mh. LJ 536 held that in case of caste scrutiny certificate, the power must be exercised within reasonable time and according to the Division Bench of this Court, such time should be about two years as that is the period of probation. If a person is to remain on probation of two years, unless he completes the period of probation, proceedings could be initiated. Since the proceedings were initiated after the period of two years, it was held not to be within reasonable period.

12. In the facts and circumstances of the case, in our opinion, the proceedings cannot be said to have been initiated within reasonable time. It is undisputed that the petitioner was appointed in 1994 and after the period of probation, he was regularized in 1996. Neither the proceedings were initiated in 1994 nor in 1996 but after five years of completion of probation period i.e. in 2001. "

Considering the facts of the present case, admittedly, the respondents were aware of the facts and yet, till this date, not initiated any proceedings. Considering the observations made by the Division Bench of this Court as well as the Bombay High Court in the

aforesaid reported decisions and also considering the matter of Manharlal H. Parmar which is an identical matter, according to my opinion, now after the period of about 19 years, such permission cannot be granted. In the matter of Manharlal Hiralal Parmar versus State of Gujarat in Letters Patent Appeal No. 370 of 2000 decided on 24.7.2001, Division Bench of this Court has observed as under in para 8 of the judgment:

"8. Faced with this situation, learned AGP has submitted before us that even if the termination order is quashed on this ground, the Government should be permitted now to hold an inquiry and in support of her submission, she has cited the decisions in the case of Director General of Police & Ors. v. Mrityunjoy Sarkar and Ors. reported in 1996 (8) SCC 280 and in the case of Union of India and ors. v. M. Bhaskaran, reported in 1995 Supp. (4) SCC 100. As against this, learned Counsel for the appellant has cited before us the decisions in the case of Union of India and ors. v. IS Singh reported in 1994 Supp. (2) SCC 518 and in the case of State of Madhya Pradesh v. Bani Singh and Anr. reported in 1990 Supp. SCC 738. We may straightway observe that if at all the respondents want to hold any inquiry, no permission is required from this Court for this purpose and, therefore, there is no question of granting permission for holding an inquiry. It is for the respondents to consider as to whether holding of an inquiry at this stage can be fruitful for any purpose or it will be an empty formality and futile exercise now after a period of seventeen years. The appellant has already continued in service for a period of seventeen years by now, may be on the strength of the interim order passed by this court, but the effect remains that much water has flown at this juncture and nothing prevented the Government if at all they wanted to do so at any stage and now after a lapse of such a long period of seventeen years, if an inquiry is permitted to be held, the appellant may also have a grievance to make that after such a long lapse of time and delay of seventeen years, no useful purpose will be served by holding inquiry and it will not be possible for him to get the material or evidence in support of his defence, if any. Even otherwise, in the pleadings of the parties, there is no direct allegation against the appellant and even

> before this court that it was at the instance of the appellant that the second list which is alleged to be forged had been got prepared and sent. On the contrary, the categorical stand taken in para 5 of the affidavit in reply is that his services have not been terminated on account of misconduct. If the termination is not on account of any misconduct, the question of inquiry simply does not arise. If the termination order is founded on misconduct, it ought to have been passed after enquiry. Therefore, there is no question of considering the prayer of the learned AGP for grant of permission to hold the inquiry and we leave it to the wisdom of the authorities themselves as to whether holding of any such inquiry in this case at this stage will be conducive to the ends of justice when the appellant has already become over age and has already remained in service for a period of more than 17 years when nothing has been pointed against his performance during the period of his service throughout uptil now."

Thus, in view of such peculiar facts and circumstances of the case, it has been held by the Division Bench of this Court in the matter of Manhar H. Parmar (supra) that there is no question of considering the prayer of the learned AGP for grant of permission to hold the inquiry and the Division Bench of this Court has, therefore, left it to the wisdom of the authorities themselves as to whether holding of any such inquiry in this case at that stage will be conducive to the ends of justice when the appellant has already become over age and has already remained in service for a period of more than 17 years when nothing has been pointed against his performance during the period of his service throughout. Therefore, considering the law laid down by the Division Bench of this Court in aforesaid two decisions as well as the Division Bench of the Bombay High Court in light of the facts of the present case, according to my opinion, after a period of 19 years, when it has been alleged in the affidavit in reply filed by the respondents that the list has been send by the employment exchange office at the instance of the petitioners and yet no inquiry or proceedings has been initiated till this date and no explanation for not initiating such proceedings till this date has been given by the respondents, according to my opinion, now at this stage, such prayer made by the learned AGP cannot be granted because if such permission is granted, then, it will amount to miscarriage of justice because the petitioners are working since 19

years and nothing adverse has been pointed out against them as regards their conduct, behaviour or efficiency and they have become over aged by now and granting of such permission is nothing but amounting to giving licence to the respondents and regularizing their negligence and/or inaction and, therefore, according to my opinion, this chapter is now required to be closed at this stage and, therefore, no such permission can be granted to the respondents.

After the period of about 19 years, it is not fair on the part of the respondents to seek such permission for initiating inquiry or proceedings against the petitioners. In Lloyd v. McMahon, reported in 1987 AC 625 : (1987) 1 All ER 1118 : (1987) 2 WLR 821, it has been stated by Lord Bridge in his speech as under:

" The so called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body domestic administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision making body, kind of decision it has to make and statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on anybody power to make decisions prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

Now, I am examining the third question as to whether the petitioners are entitled for the grant of higher pay scale or not. In para 6(A) of the petition, the petitioners are praying to issue appropriate writ, order or direction to quash and set aside the action of seeking to terminate the services of the petitioners and denying the benefit of higher pay scale as being illegal, null and void. Considering the prayers made by the petitioners in para 6(A) of the petition, according to my opinion, if the petitioners are governed by the Government Resolutions dated 5th July, 1991 and 16th August, 1994 issued by the Government granting such benefits in favour of the Government employees who are completing the service of 9-18-27 which was subsequently changed to 9-20-31. As such, nothing has been submitted

by the respondents in their pleadings and by the learned AGP that the petitioners are not governed by the Resolutions granting such benefits. What is sought to be canvassed is that such benefits have been denied to the petitioners since a fake and unauthorized list of candidates was sent to their office at the behest and instance of the petitioners. Thus, it is not the case of the respondents that the petitioners are not governed by the Government Resolutions granting such benefits. Therefore, according to my opinion, the petitioners are entitled for such benefit of higher pay scale which has been denied only under the pretext that a fake and unauthorized list of candidates was sent to their office at the behest and instance of the petitioners. Nothing in this regard has been submitted by the learned AGP Mr. Ghori. Therefore, I am of the view that the petitioners are entitled for such benefits which were denied without any genuine and legitimate ground. Today, this Court is confirming the orders of appointment of the petitioners and this court is also quashing and setting aside the action of respondents seeking to terminate the services of the petitioners and denying the benefit of higher pay scale as being illegal, null and void. When this Court is considering the question that the petitioners are entitled for the benefit of higher pay on the basis of two Government Resolutions dated 5th July, 1991 and 16th August, 1994. Therefore, in view of the delay in granting such legitimate benefit to the petitioners, this Court is also considering as to whether the petitioners are entitled for any interest upon such benefits or not in view of delay in grant of such benefit. If the petitioners are entitled for interest on such delayed payments by way of damages, then, what would be such rate of interest. This aspect has recently been considered and examined by the apex court in the matter of South Eastern Coalfields Ltd. v. State of M.P. and others reported in 2003 AIR SCW 5258. In the said reported decision, the apex court has considered a reverse case where by obtaining an interim order, some restrictions were imposed against the defendant and ultimately, the petition was dismissed and the loss caused to the defendant because of the operation of the interim orders against him and, therefore, the defendant has been compensated by the apex court by directing to pay the said amount with interest examining the principles of restitution under section 144 of the Code of Civil Procedure which has been statutorily recognised and also considering a pre existing rule of justice, equity and fair play for restitution of the original situation by making or by ordering necessary payment of interest to an aggrieved party. This aspect has been examined by the

apex court in a reverse case. However, the case on hand being a positive case wherein legal rights of the petitioner were wrongly denied without any legitimate and valid cause, the principles laid down therein or the ratio of the decision of the apex court would apply to the facts of the present case. Relevant observations made by the apex court in para 24, 25 and 26 of the said decisions (page 5270 to 5272) are reproduced as under:

> 24. In our opinion, the principle of restitution takes care of this submission. The word 'restitution' in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order,what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (See Zafar Khan & Ors. v. Board of Revenue, UP & Ors AIR 1985 SC 39). In law, the term 'restitution' is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, Seventh Edition, P. 1315), the Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that 'restitution' is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for inquiry done. "Often, the result in either meaning of the term would be the same..... Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non tortious misrepresentation, the measure of recovery is not rigid but as in other cases of restitution, such factors as relative fault, the agreed upon risks and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed". The principle of restitution has been statutorily recognized in Is. 144 of the Code of Civil Procedure, 1908. Section 144 of the CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a

final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party who has gained by the interim order of the Court so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the Court at the stage of final decision, the Court earlier would not or ought not to have passed. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.

25. Section 144 of the CPC is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from S.144, the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. In Jai Berham v. Kedar Nath Marwadi (1922) 49 IA 351, their Lordships of the Privy Council said : "It is the duty of the Court under Is. 144 of the Civil Procedure Code to place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the court to act rightly and fairly according to the circumstances towards all parties involved. Cains, LC said in Rodger v. Comptoir d' Escompte de Paris, (1871) LR 3 PC : "One of the first and

highest duties of all the Courts is to take care that the act of the Courts does not injury to any of the suitors and when the expression, the act of the Court is used, it does not mean merely the act of the primary Court, or of any intermediate Court of appeal but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter upto the highest Court which finally disposes of the Case "This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it, AA Nadar v. SP Rathinasami (1971) 1 MLJ 220. IN the exercise of such inherent power the Courts have applied the principles of restitution to myraid situations not strictly falling within the terms of Is. 144.

26. That no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court, the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate the court would act in conjunction with what is the real and substantial justice. The inquiry, if any, caused by the act of the Court shall be undone and the gain which the party would have earned unless it was interdicted

> by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favorably to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then, the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the Court withholding the release of money had remained in operation."

In para 27 of the said judgment, the apex court has observed that once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution and that such interest is not controlled by the provisions of the Interest Act of 1839 of 1978. In the instant case, according to my opinion, the doctrine of restitution is attracted and, therefore, the interest is often a normal and consequential relief given in restitution and that such interest is not controlled by the provisions of the Interest Act of 1839 of 1978. In the instant case, the benefit of higher grade has been refused on invalid ground and such benefits have been withheld by the respondents for a pretty long time and the amount of such benefits has been enjoyed by the respondents for a pretty long period and, therefore, the doctrine of restitution would come into play entitling the petitioners to get interest on such amount.

Therefore, considering the two decisions of the Division Bench of this Court as well as one decision of the Division Bench of the Bombay High Court and the decision of the apex court as regards restitution, according to my opinion, the action on the part of the respondents in seeking to terminate the services of the

petitioners and denying the benefit of higher pay scale is required to be quashed and set aside as being illegal, null and void and the petitioners are entitled for interest on the amount of arrears of higher grade at the rate of 9 per cent p.a. from the date of their entitlement till the date of actual payment thereof.

Therefore, in the result, the action on the part of the respondents in seeking to terminate the services of the petitioners and denying the benefit of higher pay scale is hereby quashed and set aside as being illegal, null and void. Respondents are hereby directed now not to hold or initiate any type of inquiry including the departmental inquiry in the subject matter of this petition against the petitioners and the respondents are also directed to regularize the services of the petitioners and to grant benefit of higher grade on the basis of the Government Resolutions dated 5.7.1991 and 16.8.1994 with 9 per cent interest on the amount of arrears of such benefits from the date of their entitlement for such benefit till the actual payment thereof. Respondents are further directed to pay the arrears of difference of salary and other allowances to each of the petitioners within three months from the date of receipt of copy of this order. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.10.12.2003. (H.K.Rathod,J.)

Vyas